No. 14/13/87-6 Lab./953.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer Industrial Tribunal-cum-Labour Court-II, Faridabad in respect of the dispute between the workman and the management of M/S Kanapo Textile (P) Ltd., Faridabad *versus* Virender Singh.

IN THE COURT OF SH. U.B. KHANDUJA, PRESIDING OFFICER,
LABOUR COURT-II, FARIDABAD

Reference. No. 274/90

between

THE MANAGEMENT OF M/S KANAPO TEXTILE (P) LTD.,
PLOT NO. 82, SECTOR-6, FARIDABAD

and

THE WORKMAN NAMELY SHRI VIRENDER SINGH C/O SH. AMAR SINGH SHARMA,
LABOUR UNION OFFICE, S.S.I. PLOT NO. 1K/14, N.I.T. FARIDABAD

Present :

Sh. A.S. Sharma, AR, for the workman.

Sh. R.C. Sharma, AR, for the management.

AWARD

In exercise of the powers conferred by clause(c) of sub-section(i) of section 10 of the Industrial Disputes Act, 1947 (herein-after referred to as 'the Act'), the Governor of Haryana referred the following dispute between the parties mentioned above, to this court for adjudication,--*vide* Haryana Govt. Endst. No. 32112-18, dated 16th August, 1990 :--

Whether the termination of services of Sh. Virender Singh is legal & justified ? It not, to what relief, is he entitled to ?

2. The case of the workman is that he was employed by the management of 11th January, 1985 as Jiggar Man on a permanent post. His last drawn wages were Rs. 858 p.m. He had not given any chance of complaint during the period of his service. He made an attempt of organise a union of the workers for the redressal of the grievances through peaceful means. The management felt annoyed and terminated his services on 5th February, 1990 in a revengful spirit without issuing any charge sheet or holding domestic enquiry or making payment or retrenchment compensation. He is thus, entitled to be reinstated into service with full back wages.

3. The management submitted written statement dated 25th November, 1991 stating therein that initially the workmen had taken employment as Jigger Man with the registered contractor Sh. Nageshwar purely and temporary basis from 1st January, 1987 to 31st December, 1987. Again he was employed by Sh. Nageshwar for a fixed duration from 1st March, 1988 to 31st March, 1989 and on completion of the temporary tenure the

workman had collected his full & final dues from the contractor on 31st March, 1989. Then the workman was employed by the present management as Jiggar Man in the Dyeing department from 1st August 1989 to 31st January, 1990 and on the expiry of the contractual service, he collected his full & final account from the company on 31st January, 1990. His relation with the management as an employee had come to an end on 31st January, 1990 and as much he was not entitled to any relief.

4. The workman submitted rejoinder dated 20th January, 1992 re-asserting the previous averments and denying the averments of the management.

5. On the pleading of the parties, the following issue was framed:-

1. Whether the termination of services of Sh. Virender Singh is legal & justified ? if not to what relief, is he entitled to ? (as per terms of reference).

6. Both the sides have led evidence.

7. I have heard the authorised representatives of both the sides and have also gone through the evidence on record. My findings on the aforesaid issue are as under :--

Issue No. 1:

8. Two witnesses have been examined by the management. MW-1 Dharam Raj deposed that he had brought the attendance register and payment of wages sheet for the period from 1984 to 1990 and the copies of the relevant wages slip were Ex. M-2 to Ex. M-4. In cross examination he admitted that he had not brought the wages slip except Ex. M-1 to Ex. M-4. He admitted that the wages slip Ex. W-1 to Ex. W-6 were issued by the company. In the end, he stated that the details of the period during which the workman had worked with them were available in the slip Ex. M-5. MW-2 M.P. Shrivastva deposed that the factory was closed on 7th February, 1994 as per copies of notice Ex. M-6.

9. On the basis of aforesaid evidence, it has been submitted on behalf of the management that it is established that the workman had not rendered service for a continuous period of 240 days during the 12 calendar months and as such he is not entitled to any relief.

10. To support this plea a reference has also been made to the case of Karnal Central Coop. Bank Ltd. Karnal through its Managing Director *versus* Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and others 1994 (1) PLR 312 in which it was held that it is by now well settled that industrial workers who do not complete 240 days of service have not industrial rights under the Act and can not, therefore, avail of the machinery provided under the Act for the settlement of the dispute.

11. On the other hand, the workman deposed facts mentioned above in his demand notice.

12. It has been submitted on behalf of the workman that the management has not come to the court with clean hands and has also with-held the material documents. To shore this contention, it has been

submitted that as per case of the workman he was employed on 11th January, 1985 but the management stated in para I of the written statement that the workman was firstly employed by Sh. Nageshwar, contractor during the period from 1st January, 1987 to 31st December, 1987. MW-1 Dharam Raj submitted work period slip Ex. M-5 which clearly shows that the workman had worked with the present management during the period from 1st July, 1986 to 31st December, 1986. Apart from this, MW-1 Dharam Raj admitted that wages slip for the month of November, 1986 Ex. W-1 and wages slip for the month of December 1986 Ex. W-2 were issued by the present management. It is thus, clearly established that the position given by the management in para I of the written statement that the workman had taken employment with Sh. Nageshwar Firstly during the period from 1st January, 1987 to 31st December, 1987 is in-correct and false. In the second paragraph of the written statement it was stated that the workman had worked for a fixed duration from 1st March, 1988 to 31 March, 1989 with Mr. Nageshwar, contractor but this position is also in-correct as MW-1 Dharam Raj admitted in his cross-examination that wages slip Ex. W-3 for the month of February, 1989 and wages slip Ex. W-4 for the month of March, 1989 were issued by the present management. Apart from this the work period slip Ex. M-5 produced by Dharam Raj also indicate that the workman had worked with the present management w.e.f. 2nd January, 1989 to 31st March, 1989. Keeping in view, this position, it is clearly established that the present workman had worked with the present management w.e.f. 2nd January, 1989 to 31st March, 1989 and from 1st August, 1989 to 31st January, 1990 for a period of more than 240 days during 12 calendar months. He is thus, entitled to be reinstated into service with full back wages for non-compliance of the madatory provision of Section 25-F of the Act.

13. There is merit in the submission made on behalf of the workman. MW-1 Dharam Raj stated that the workman had worked with them during the period mentioned in the slip Ex. M-5. The perusal of this slilp shows that the workman had worked with the present management w.e.f. 2nd January, 1989 to 31st March, 1989. It is mentioned in para 3 of the written statement itself that the workman had worked with the present management w.e.f. 1st August, 1989 to 31st January, 1990 for a fixed period. The management has not led evidence to prove that the workman was employed for a fixed period. It is thus, clear that the workman had rendered service for a continuous period of more than 240 days in 12 calendar months i.e. for 89 days w.e.f. 2nd January, 1989 to March 1989 (as per slip Ex. M-5) and for 153 days during the period from August 1989 to January, 1990. Admittedly the workman was not paid retrenchment compensation envisaged under section 25-F of the Act. Consequently, the termination of services of the workman is illegal and unjustified.

14. MW-2 M.P. Shrivastva stated on oath that the factory was closed on 7th February, 1994 as per notice Ex. M-6 placed on the file. There is not co-gent evidence from the side of the workman to rebut this position. That being so, the order for reinstatement of the workman can not be passed. In the circumstances of the case, it is held that the workman shall be deemed to be in continuous service of the management upto 7th February, 1994 and he shall be given all benefits admissible

to him on the closure of the factory upto this date. He will be given full back wages. The award is passed accordingly.

The 11th November, 1994.

U.B. KHANDUJA,

Presiding Officer,
Labour Court-II, Faridabad.

Endorsement No. 3232, dated the 17th November, 1994

A copy with three spare copies is forwarded to the Financial Commissioner and Secretary to Govt. Haryana, Labour Deptt., Chandigarh.

U.B. KHANDUJA,

Presiding Officer,
Labour Court-II, Faridabad.
The 6th December, 1994

No. 14/13/87-6Lab./954.--In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad in respect of the dispute between the workman and the management of M/s Transport Commissioner', Haryana, Chandigarh *versus* Sh. Siri Pal :—

IN THE COURT OF SHRI U.B. KHANDUJA, PRESIDING OFFICER,
LABOUR COURT-II, FARIDABAD

Reference No. 353/90

between

M/S (1) TRANSPORT COMMISSIONER, HARYANA, CHANDIGARH
(2) GENERAL MANAGER, HARYANA ROADWAYS, FARIDABAD

versus

SHRI SIRI PAL, S/O SHRI RATTAN PAL SINGH, C/O SHRI BHIM SINGH YADAV,
65-A, CHAWALA COLONY, 100, FOOT ROAD, WIDE ROAD,
BALLABGARH (FARIDABAD)

Present :

Sh. B.S. Yadav, A.R. for the workman.

Sh. R.P. Dagar, A.D.A. for the respondent.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), the Governor of Haryana referred the following dispute between the parties mentioned above, to this court for adjudication,--vide Haryana Government, Endorsement No. 47582--88, dated the 18th December, 1990 :—

Whether the termination of services of Shri Siri Pal is legal and justified ? If not to what relief, is he entitled to ?

2. The case of the workman is that he was appointed as driver on 22nd April, 1989 through employment exchange against a vacancy reserved for Ex-serviceman. His services were illegally terminated on 27th September, 1989 and so he raised an industrial dispute by serving demand notice. The Labour-cum-conciliation officer submitted failure report to the Labour Commissioner, Haryana, Chandigarh against the respondents. In that situation the respondents allowed him to resume duty as driver on 9th November, 1989. He had then been performing his duties as driver with effect from 9th November, 1989 to 15th July, 1990, but he was paid wages at the rate of Rs. 800 p.m. On 16th July, 1990 the respondents again terminated his services without assigning any reason or justification when he asked for payment of salary of a driver instead of Rs. 800 p.m. He is thus, entitled to be reinstated into service with full back wages.

3. The respondent No. 2 submitted written statement admitting the fact that the workman was appointed on 22nd April, 1989 through employment exchange against a vacancy reserved for Ex-servicemen. It was also admitted that the services of the workman were dis-continued but it was stated that the same were discontinued with effect from 25th July, 1989 and not with effect from 27th September, 1989. It was further submitted that the workman was appointed as helper on daily wages from 9th November, 1989 to 30th November, 1989, 1st December, 1989 to 31st December, 1989, 5th January, 1990 to 31st January, 1990 and from 27th February, 1990 to 30th April, 1990. Thereafter the workman was offered a seasonal post of water carrier from 1st May, 1990 to 30th June, 1990 and from 1st July, 1990, to 15th July, 1990. The workman had thus, not worked continuously for a period of more than 240 days prior to the date of termination of his services and as such he was not entitled to any relief.

4. The workman submitted rejoinder dated 14th October, 1991 re-asserting his previous averments and denying the averments of the respondents.

5. On the pleadings of the parties, the following issue was framed :--

(1) Whether the termination of services of Shri Siri Pal is legal and justified ? If not, to what relief, is he entitled to ? (As per terms of reference).

6. Both the sides have led evidence.

7. I have heard the authorised representatives of both the sides and have also gone through the evidence on record. My findings on the aforesaid issue are as under :--

Issue No. 1 :

8. The respondents have examined only one witness Hemraj, clerk and he reiterated the position contained in the written statement. On the basis of this statement it has been submitted on behalf of the respondents that it stands proved that the workman had not worked for a continuous period of more than 240 days prior to the termination of his service and as such he is not entitled to any relief.

9. On the other hand, three witnesses have been examined on behalf of the workman. The workman has stated the facts mentioned above.

WW-2 Ram Beer Singh, Duty Clerk deposed that the summoned record had been lost and FIR to this effect was lodged with the police as per its copy Ex.W-6. WW-3 Hari Singh, yard Master also deposed in tune with WW-2 Ram Beer Singh.

10. On the basis of aforesaid evidence, it has been submitted on behalf of the workman that it is admitted in the written statement that the workman was initially appointed as driver against a vacancy reserved for Ex-serviceman. It is also not disputed that his services were terminated on 25th July, 1989 and then he had raised demand notice about which the Labour-cum-Conciliation Officer had submitted failure report. In this situation the workman could be allowed to resume duty on 9th November, 1989 only as a driver and not as a helper. The respondents have not placed on record any appointment letter to show that the workman was ever appointed as a helper. No weight can be given to the statement of MW-1 Hemraj clerk as he admitted in his cross-examination that he himself was appointed as clerk on 8th April, 1992. In other words MW-1 Hem Raj was not in service of the respondents during the disputed period. Besides this the workman has placed on file a copy of the challan dated 8th July, 1990 Ex.W-4 which clearly shows that the workman was driving a bus on that day. The workman has also placed on record a copy of the FIR dated 12th September, 1989 Ex.W-5 which also shows that the workman was on duty as driver under the respondents on that day. The workman had made efforts to get the other relevant record produced such as way bills and record maintained by the Yard Master through WW-2 Rambeer Singh and WW-3 Hari Singh but they did not produce on the ground that the same has been lost. It is clearly established that the workman had worked continuously 249 days during the period from 9th November, 1989 to 15th July, 1990. Admittedly he was not paid retrenchment compensation as per section 25-F of the Act. Consequently, the termination of his services by the respondents is illegal and unjustified and he is entitled to be reinstated into service with continuity in service and full back wages.

11. There is merit in the submissions made on behalf of the workman. The respondents have not produced the relevant record on the ground that the same has been burnt. MW-1 Hem Raj clerk could have no personal knowledge about the facts of the case as he was not in the service of the respondents much during the disputed period. It has not been made clear by him as to how he had made statement that the workman was appointed as helper and water carrier etc. It is also not clear from the evidence led by the respondents as to why the workman was appointed as helper when he was originally appointed as driver against a vacancy reserved for Ex-serviceman and was taken back in service after the submission of failure report by the Labour-cum-Conciliation Officer referred to above. In these circumstances, the oral testimony of the workman has to be believed that he had been working as driver for a continuous period of 249 days during the period from 9th November, 1989 to 15th July, 1990. It also needs mention that the statement of the workman also finds support from the copy of challan dated 8th July, 1990 Ex.W-4 and copy of F.I.R. dated 12th September, 1989 Ex. W-5 that he had been working as driver. Admittedly no retrenchment compensation was given to the workman envisaged under section 25-F of the Act. Consequently, it is held that the termination of services of the workman by the respondent in violation of the section 25-F of the Act is illegal and unjustified and he is entitled to be reinstated

into service with continuity in service and full back wages. The award is passed accordingly.

U.B.KHANDUJA,

Dated the 7th November, 1994. Presiding Officer,
Labour Court-II,
Faridabad.

Endorsement No. 3231, dated the 17th November, 1994.

A copy, with three spare copies, is forwarded, to the Financial Commissioner and Secretary to Government Haryana, Labour Department, Chandigarh.

U.B. KHANDUJA,

Presiding Officer,
Labour Court-II,
Faridabad.

No.14/13/87-6Lab./956.--In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad in respect of the dispute between the workman and the management of M/s Indographic Art Machinery Co. (P) Ltd., Ballabgarh versus R.D. Singh.

IN THE COURT OF SHRI U.B. KHANDUJA, PRESIDING OFFICER, LABOUT COURT-II, FARIDABAD

Reference No. 295/92

between

M/S INDOGRAPHIC ART MACHINERY CO.(P) LTD.,
22, MATHURA ROAD, BALLABGARH

versus

SHRI R.D. SINGH,S/O SHRI RAM NARAYAN, HOUSE NO. 195,
BHATIA COLONY, MILK PLANT ROAD, BALLABGARH

Present :

Sh. M.S. Nagar, for the workman.
Sh. R.C. Sharma, for the management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (i) of section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'), the Governor of Haryana referred the following dispute between the parties mentioned above, to this court for adjudication,--*vide* Haryana Government Endorsement No. 22698--703, dated the 19th May, 1992 :--

Whether the termination of services of Shri R.D. Singh is legal and justified ? If not, to what relief, is he entitled to ?

2. The case of the workman is that he had been in the employment of the management as a Planning Assistant for the last about eight years and had never given any opportunity of complaint. His last drawn wages were Rs. 1,400 p.m. His services were governed by the Certified Standings Orders of the Company. The management in gross violation of the provisions of the Certified Standing Orders and rules of natural justice terminated his service,--*vide* letter dated 2nd January, 1992 without assigning any reason and justification. His services could not be terminated without following the provisions of section 25-F and 25-N of the Act. He was neither paid retrenchment benefits envisaged under section 25-F of the Act nor any permission to retrench him from service was taken from the Government required under section 25-N of the Act. The impugned order terminating his services is thus, illegal and void. He is entitled to be reinstated into service with full back wages and continuity in service.

3. The management submitted written statement dated the 11th November, 1992 taking two preliminary objections. Firstly that the workman had filed a civil suit claiming the same relief and so he is estopped from perusing and contesting the case. Secondly the company stood completely ruined and no manufacturing activity had been carried on since January 1992 and as such there existed no post on which the workman could be re-appointed/re-instated. It was further mentioned that the workman was not governed by Certified Standing Orders of the company and was only governed by the contract of service. His services were terminated as per conditions embodied in his appointment letter and so the impugned action of the management is legal and valid.

4. The workman submitted rejoinder re-asserting the previous averments and denying the averments of the management.

5. On the pleadings of the parties, the following issue was framed :-

(1) Whether the termination of services of Sh. R.D. Singh is legal and justified ? If not, to what relief, is he entitled to ? (As per terms of reference).

6. Both the sides have led evidence. (It was recorded in the case Ref. No. 290, **J.P. Sharma** *versus* **Indographic Art Machinery Co. (P) Ltd.)**

7. I have heard the authorised representatives of both the sides and have also gone through the evidence on record. My findings on the aforesaid issue are as follows :-

Issue No. 1:

8. It has been submitted on behalf of the management that the workman admitted in rejoinder that he had filed a civil suit which was dismissed as withdrawn. Thus, he was estopped from raising the dispute under the Act having availed of alternative remedy. In reply, it has been submitted that the claimant had filed the civil suit for restraining the management from disposing/alienating the property but the same was withdrawn as the management had alienated their properties during the pendency of the suit. This plea of the workman has to prevail as MW-1 Yasin Khan admitted in his statement made in the court that the

workman had not filed the civil suit claiming the relief for the reinstatement and as such it has no effect on the present proceedings. Consequently the objection taken on behalf of the management is not tenable.

9. It has next been contended on behalf of the management that the services of the workman was terminated as per terms and conditions of his appointment and as such the impunged action is legal and valid. In reply, it has been submitted that it is not disputed that the workman had rendered service for a period of about 8 years prior to the date of termination of his services. It is also not disputed that the workman was a workman defined under Section 2(s) of the Act and as such he was governed by the provisions of the Act. In this situation the services of the workman could not be terminated simply as per terms and conditions of his appointment. His services could be terminated by following the provisions of Section 25-F of the Act which were not complied with. Thus, the impunged action of the management is illegal and unjustified. There is merit in the submission made on behalf of the workman because the terms and conditions of appointment letter could not have over ridding effect to the provisions of the Act. So, the contention raised on behalf of the management can not be accepted.

10. Faced with the aforesaid position Sh. R.C. Sharma authorised representative of the management urged that it is clear from the impugned order that the workman was asked to collect his dues from the Account Section between 10 a.m. to 4 p.m. after submitting necessary clearance. The workman would have been paid the retrenchment compensation if he had gone to the Account Section as per direction of the management. Thus, it stands proved that the management had complied with the provision of Section 25-F of the Act. To support this plea a reference has been made to the case of **Hari Singh** *versus* **Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and anothers** 1993 LLR 385 in which the workman had remained absent and was treated to have abandoned the job. Since the workman was not present, notice was sent to him by post at his local address and he was asked to contract the office of the company to collect his dues. In these circumstances, it was held that it meant nothing except that the workman was entitled to collect his dues as contemplated under Section 25-F of the Act. It was further held that such an offer amounts to tendering the amount to the workman along with retrenchment notice especially when the office of the company is situated at the place of the residence of the workman.

11. In the case referred to above, the management had clearly advised the workman to contact the office of the company during the working days from 10 a.m. to 4 p.m. for the collection of his dues. In the instant case, the management advised the workman to collect his dues if any, from the Account Section. The words 'if any' used in this letter clearly indicate that the management did not want to pay retrenchment benefit to the workman envisaged under Section 25-F of the Act. That being so, the law laid down in that case can not be applied on the facts of the instant case and the contention raised by the management is rejected.

12. It has been next urged on behalf of the management that the reference made by the Government itself to the court is illegal as the dispute regardingg retrenchment is not covered in the Second Schedule and it is covered in the Third Schedule. The reference should have been made to the Industrial Tribunal. Hence the workman is not entitled to

any relief. To support this plea a reference has been made to the case between U.P. **Electric Supply Company Ltd.** *and* **R.K. Shukla 1960—70, Supreme Court case** page 889.

13. The contention raised on behalf of the management can not be prevail as the provision to Section 10(1)(d) of the Act itself states that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than 100 workmen, the appropriate Government may if it so thinks fit, make the reference to the Labour Court under Clause(c).

14. It is concluded that the termination of services of the workman by the management without complying with the provision of Section 25-F of the Act is illegal and unjustified. Consequently, the workman is entitled to reinstatement into service with continuity in service and full back wages. It is however, not disputed that the factory was closed in July 1992. That being so, the workman shall be deemed to have retrenched on 31st July, 1992 on the closure of the factory. He be thus, given all benefits accuring to him on this count till that date. The award is passed accordingly.

The 27th October, 1994.

U.B. KHANDUJA,

Presiding Officer,
Labour Court-II, Faridabad.

Endst. No. 3153, dated the 31st October, 1994.

A copy with three spare copies is forwarded to the Financial Commissioner and Secretary to the Government Haryana, Labour Department, Chandigarh.

U.B. KHANDUJA,

Presiding Officer,
Labour Court-II, Faridabad.

The 6th December, 1994

No. 14/13/87-6Lab./959.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act. No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad in respect of the dispute between the workman and the management

of M/s Indographic Art Machinery (P) Ltd., Ballabgarh *versus* Suresh Chander Gupta.

IN THE COURT OF SHRI U.B. KHANDUJA, PRESIDING OFFICER, LABOUR COURT-II, FARIDABAD

Ref. No. 293/92.

between

THE MANAGEMENT OF M/S INDOGRAPHIC ART MACHINERY (P) LTD., 22, MATHURA ROAD, BALLABGARH

versus

THE WORKMAN NAMELY SHRI SURESH CHANDER GUPTA, S/O SHRI BRIJ MOHAN LAL GUPTA, HOUSE NO. E-68, ADARSH NAGAR, MALRANA ROAD, BALLABGARH, DISTT. FARIDABAD

Present :

Sh. M.S. Nagar, AR, for the workman.

Sh. R.C. Sharma, AR, for the management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (herein-after referred to as 'the Act'), the Governor of Haryana referred the following dispute between the parties mentioned above, to this court for adjudication,--*vide* Haryana Government Endst. No. 22675--81, dated 19th May, 1992 :-

> Whether the termination of services of Sh. Suresh Chander Gupta is legal and justified. If not, to what relief, is he entitled to ?

2. The case of the claimant is that he had been in the employment of the management as an Engineer (Assembly) for the last about eight years and had never given any opportunity of complaint. His last drawn were Rs. 2,264 p.m. His services were governed by the certified standing orders of the company. The management in gross violation of the provisions of the certified standing orders and rules of natural justice terminated his service, —*vide* letter dated 2nd January, 1992 without assigning any reason and justification. Although he had been designated as an Engineer (Assembly) but he was purely a workman as defined under Section 2(S) of the Act. He had to perform manual work most of the time. He had no managerial or supervisory powers. His services could not be terminated without following the provisions of Sections 25-F and 25-N of the Act. He was neither paid retrenchment benefit envisaged under Section 25-F of the Act nor any permission to retrench him from service was taken from the Government required under Section 25-N of the Act. The impugned order terminating his service is thus, illegal and void. He is entitled to be reinstated into service with full back wages and continuity in service.

3. The management submitted written statement dated 11th Noverber, 1992 taking three preliminary objections. Firstly that the

claimant was not a 'workman' as defined in section 2(S) of the Act and as such the reference is liable to be rejected. Secondly the workman had filed a civil suit claiming the same relief and so he is estopped from perusing and contesting the case. Thirdly the company stood completely ruined and no manufacturing activity had been carried on since January 1992 and as such there existed no post on which the claimant could be re-appointed/reinstated. It was further submitted that the provisions of the Certified Standing Orders are not applicable to the claimant as he was not a workman as defined in Section 2(S) of the Act. His services were thus, legally terminated as per terms of his appointment. He is thus, not entitled to any relief.

4. The claimant submitted rejoinder re-asserting the previous averments and denying the averments of the management.

5. On the pleadings of the parties, the following issues were framed :—

(1) Whether the applicant does not fall within the definition of Section 2(S) of the Act ?

(2) As per terms of reference.

6. Both the sides have led evidence. (It was recorded in the file of Ref. No. 290/92, **J.P. Sharma** *V/s* **Indographc Art Machinery Co. (P) Ltd.**

7. I have heard the authorised representatives of both the sides and have also gone through the evidence on record. My findings on the aforesaid issues are as follows :-

Issue No. 1:

8. MW-1 Yasin Khan deposed that the claimant had been working with them as a Supervisor. He had been invested with powers of signing letters, granting increments, sanction of leave and to make recommendations for making new appointments. In the end, he deposed that 10—15 persons used to work under him.

9. On the other hand, the claimant deposed that initially he was appointed as Technical Assistant and thereafter he was made Assembly Engineer. He used to do assembly work and assembling Printing machines. He was not entrusted with any supervisory work or passing of bills etc.

10. On the basis of aforesaid evidence, it has been submitted on behalf of the management that as per provision of Section 2(S) of the Act a person is not included in the term 'workman' defined in it who being employed in supervisory capacity draw wages exceeding 1,600 per month. In the instant case admittedly the claimant was appointed as an Engineer (Assembly) and his salary was Rs. more than Rs. 2,264 p.m. It is proved from the statement of MW-1 Yasin Khan referred to above that the claimant had been working as a Supervisor. That being so, he is not a workman defined under Section 2(S) of the Act.

11. In reply, it has been contended on behalf of the claimant that the mere designation of supervisor does not exclude a person from the definition of term 'workman'. It is the primary duty assigned to

a person which is the deciding factor. The claimant has vouched that he used to do the job himself and no workman used to work under him. MW-1 Yasin Khan did not produce the record pertaining to the alleged grant of increments by the claimant or sanctioning of leave by him. He also could not give details of the persons recommended by the claimant for fresh recruitment. The claiment was thus, a workman as defined under Section 2(S) of the Act.

12. To shore the aforesaid position the authorised representative of the claimant relied on the decision in the case between M/s Blue Star Ltd. and N.R. Sharma and others 1975(31) FLR 102 in which it was held that the essence of supervisory nature of work under Section 2(S) is the Supervision of the one person over the work of others. Supervision contemplated direction and control. Ordinary supervision is not Supervisory within the meaning of Section 2(S); rather supervision of higher type over ordinary supervision would be entitled to be called 'Supervisory' within the meaning of Section 2(S) of the Act.

13. In South Indian Bank Ltd. *versus* A.R. Chaku AIR 1964 Supreme Court 1522 their lordships of the Supreme Court referred to Paragraph 332 of Shastri award which pointed out that the mere fact that a person was designated as an Accountant would not take him out of the category of the workman. For the same reason, the mere fact that the claimant was designated and appointed as Engineer will not bring him out from the definition of the term 'workman' defined in Section 2(S) of the Act. A division bench of Madras High Court held in the case between Engineering Construction Corporation Ltd., Madras and Additional Labour Court, Madras and anothers 1980 LLJ page 16 that the nature of work and not the nomenclature that is to be considered in deciding whether a person was a workman or not. The management has not adduced any documentary evidence to prove that the claimant was invested with the powers of signing papers granting increments, sanctioning leave and making recommendations for new recruitment as stated by MW-1 Yasin Khan in his examination in chief and as such this position can not be taken to be correct. Consequently, it is held that the claimant was a workman as defined under section 2(S) of the Act. Issue No. 1 is decided against the management and in favour of the claimant.

Issue No. 2 :

14. It has been submitted on behalf of the managment that the workman admitted in rejoinder that he had filed a civil suit which was dismissed as withdrawn. Thus, he was estopped from raising the dispute under the Act having availed of alternative remedy. In reply it has been submitted that the claimant had filed the civil suit for restraining the management from disposing/alienating the property but the same was withdrawn as the management had alienated their properties during the pendency of the suit. This plea of the workman has to prevail as MW-1 Yasin Khan admitted in his statement made in the court that the workman had not filed the suit claiming the relief for his reinstatement and as such it has no effect on the present proceedings. Consequently, the objection taken on behalf of the management is not tenable.

15. It has next been contended on behalf of the management that the services of the workman were terminated as per terms and conditions of his appointment and as such the impunged action is legal and valid. In reply, it has been submitted that it is not disputed that the workman

had rendered service for a period of about 12 years prior to the date of termination of his services. It is also proved that the workman was a workman defined under Section 2(S) of the Act and as such he was governed by the provisions of the Act. In this situation the services of the workman could not be terminated simply as per terms and conditions of his appointment. His services could be terminated by following the provisions of section 25-F of the Act which were not complied with. Thus, the impunged action of the management is illegal and unjustified. There is merit in the submission made on behalf of the workman because the terms and conditions of appointment letter could not have over ridding effect to the provisions of the Act. So, the contention raised on behalf of the management can not be accepted.

16. Faced with the aforesaid position, Sh. R.C. Sharma authorised representative of the management urged that it is clear from the impunged order that the workman was asked to collect his dues from the Account Section as per direction of the management. Thus, it stands proved that the management had complied with the provision of Section 25-F of the Act. To support this plea a reference has been made to the case of Hari Singh versus Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak and anothers 1993 LLR 385 in which the workman had remained absent and was treated to have abandoned the job. Since the workman was not present, notice was sent to him by post at his local address and he was asked to contact the office of the company to collect his dues. In these circumstances, it was held that it meant nothing except that the workman was entitled to collect his dues as contemplated under Section 25-F of the Act. It was further held that such an offer amounts to tendering the amount to the workman along with retrenchment notice especially when the office of the company is situated as the place of the residence of the workman.

17. In the case referred to above, the management had clearly advised the workman to contact the office of the company during the working days from 10 a.m. to 4 p.m. for the collection of his dues. In the instant case, the management advised the workman to collect his dues if any, from the Account Section. The words 'if any' used in this letter clearly indicate that the management did not want to pay retrenchment benefit to the workman envisaged under Section 25-F of the Act. That being so, the law laid down in that case can not be applied on the facts of the instant case and the contention raised by the management is rejected.

18. It has been next urged on behalf of the management that the reference made by the Government itself to the court is illegal as the dispute regarding retrenchment is not covered in the Second Schedule and it is covered in the Third Schedule. The reference should have been made to the Industrial Tribunal. Hence, the workman is not entitled to any relief. To support this plea a reference has been made to the case beetween UP Electric Supply Company Ltd. and R.K. Shukla 1960--70 Supreme Court case page 889.

19. The contention raised on behalf of the management can not be prevail as the provisio to Section 10(1)(d) of the Act itself states that where the dispute relates to any matter specified in the Third Schedule and is not likely to effect more than 100 workmen, the appropriate Govt. may if it so thinks fit, make the reference to the Labour Court under clause(c).

20. It is concluded that the termination of service of the workman by the management without complying with the provision of Section 25-F of the Act is illegal and unjustified. Consequently, the workman is entitled to reinstatement into service with continuity in service and full back wages. It is however, not disputed that the factory was closed in July, 1992. That being so, the workman shall be deemed to have retrenched on 31st July, 1992 on the closure of the factory. He be thus, given all benefits accuring to him on this count till that date. The award is passed accordingly.

Dated the 4th November, 1994.

V.B. KHANDUJA,

Presiding Officer,
Labour Court-II, Faridabad.

Endst. No. 3221, dated 16th November, 1994.

A copy, with three spare copies, is forwarded, to the Financial Commissioner and Secretary to the Government Haryana, Labour Department, Chandigarh.

U.B. KHANDUJA,

Presiding Officer,
Labour Court-II, Faridabad.

The 6th December, 1994

No. 14/13/87-6Lab./962.--In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad in respect of the dispute between the workman and the management of M/s Kanapo Textile (P) Ltd., Faridabad *versus* Dal Chand.

IN THE COURT OF SHRI U.B. KHANDUJA, PRESIDING OFFICER,
LABOUR COURT-II, FARIDABAD

Reference No. 273/90

between

THE MANAGEMENT OF M/S KANAPO TEXTILE (P) LTD.,
PLOT NO. 82, SECTOR-6, FARIDABAD

versus

THE WORKMAN NAMELY SHRI DAL CHAND, C/O SHRI AMAR SINGH SHARMA,
LABOUR UNION OFFICE, S.S.I., PLOT NO. IK/14,
N.I.T., FARIDABAD

Present :

Shri A.S. Sharma, AR, for the workman.

Shri R.C. Sharma AR, for the management.

AWARD

In exercise of the powers conferred by clause (c) of Sub-Section (i) of Section 10 of the Industrial Disputes Act, 1947 (herein-after

referred to as 'the Act'), the Governor of Haryana referred the following dispute between the parties mentioned above, to this court for adjudication,--*vide* Haryana Government Endorsement No. 32119-25, dated 16th August, 1990 :--

Whether the termination of services of Shri Dal Chand is legal and justified ? If not, to what relief, is he entitled to ?

2. The case of the workman is that he was employed by the management on 13th March, 1984 as Jiggar Man on a permanent post. His last drawn wages were Rs. 858 p.m. He had not given any chance of complaint during the period of his service. He made an attempt to organise a union of the workers for the redressal of the grevances through peaceful means. The management felt annoyed and terminated his services on 5th February, 1990 in a revengful spirit without issuing any charge sheet or holding domestic enquiry or making payment of retrenchment compensation. He is thus, entitled to be reinstated into service with full back wages.

3. The management submitted written statement dated 25th November, 1991 stating therein that initially the workman was appointed for a fixed period from 14th October, 1984 to 10th April, 1985. Again he was employed temporarily from 1st December, 1986 to 31st May, 1987. He was further employed temporarily for a fixed period from 1st March, 1988 to 31st August, 1988 and had collected his full and final account from the company on 31st August, 1988. Lastly he was employed temporarily for a fixed duration from 1st April, 1989 to 30th September, 1989 and had collected his full and final account on 30th September, 1989. Thereafter he had taken employment with Shri Nageshwar Singh, contractor from 1st October, 1989 to 31st January, 1990 and collected his entire dues on 31st January, 1990. His relation with the management as an employee had come to an end on 30th September, 1989 and as such he was not entitled to any relief.

4. The workman submitted rejoinder dated 20th January, 1992 re-asserting the previous averments and denying the averments of the management.

5. On the pleadings of the parties, the following issue was framed :--

1. Whether the termination of services of Shri Dal Chand is legal and justified ? If not, to whaat relief, is he entitled to (As per terms of reference).

6. Both the sides have led evidence.

7. I have heard the authorised representatives of both the sides and have also gone through the evidence on record. My findings on the aforesaid issues are as under :--

Issue No. 1

8. Two witnesses have been examined by the management. MW-1 Dharam Raj deposed that he had brought the attendance register and payment of wages sheets for the period from 1984 to 1990 and copies of relevant pay rolls were Ex. M-1 to Ex. M-4. In cross examination

he admitted that he had not brought the Pay Rolls except Ex. M-1 to Ex. M-4. He admitted that the wages slips Ex. W-1 to Ex. W-8 were issued by their company. In the end, he stated that the details of the period during which the workman had worked with them were available in the slip Ex. M-5. MW-2 M.P. Shrivastva, deposed that the factory was closed on 7th February, 1994 as per copy of notice Ex. M-6.

9. On the basis of aforesaid evidence, it has been submitted on behalf of the management that it is established that the workman had not rendered service for continuous period of 240 days during the 12 calandar months and as such he is not entitled to any relief.

10. To support this plea a reference has also been made to the case of Karnal Central Coop. Bank Limited Karnal through its Managing Director versus Presidning Officer, Industrial Tribunal-cum-Labour Court, Rohtak and others 1994 (1) PLR 312 in which it was held that it is by now well settled that industrial workers who do not complete 240 days of service have no industrial rights under the Act and can not, therefore, avail of the machinery provided under the Act for the settlement of the dispute.

11. On the other hand, the workman deposed the facts mentioned above in his demand notice.

12. It has been submitted on behalf of the workman that the management has not placed on record any document to show that the workman was appointed for a fixed period from time to time as mentioned in the written statement and had also taken his full and final dues. The management has also not led any evidence to prove that the workman had worked with Shri Nageshwar Singh, contractor during the period from 1st October, 1989 to 31st October, 1990. It is thus, clear that the workman had worked for a period of more than 240 days even taking the period from 1st April, 1989 to 31st January, 1990. Admittedly the workman was not paid in retrenchment compensation and as such he is entitled to be reinstated into service with full back wages and continuity in service.

13. There is merit in the submission made on behalf of the workman. It is the case of the workman that he had worked with the management w.e.f. 13th March, 1984 to 4th February, 1990. The management in its written statement had stated that the workman was initially appointed for a fixed period from 14th October, 1984 to 10th April, 1985 and had taken his full and final amount from the company on 10th April, 1985. The work period slip Ex. M-5 produced by MW-1 Dhram Raj shows that the workman had worked from 14th October, 1984 to 30th April, 1985 and not upto 10th October, 1985. It was mentioned in the second paragraph of the written statement that the workman was employed for the second time from 1st December, 1986 to 31st May, 1987 but in the slip Ex. M-5 it was mentioned that the workman had also worked during the period from 1st October, 1985 to 31st October, 1985. It was next mentioned in the written statement that the workman was employed for the third time from 1st March, 1988 to 31st August, 1988 and from 1st July, 1988 to 31st August, 1988. Similarily it was mentioned para 4 of the written statement that the workman had worked for a fixed duration from 1st April, 1989 to 30th September, 1989 but in the slip Ex. M-5 it is shown that the workman had worked from 1st April, 1989 to 31st May, 1989 and from 1st August, 1989 to 30th September, 1989.

It is thus, clear that the evidence led by the management is quite contrary to the position indicated in the written statement. Keeping in view this position it can not be believed without any evidence to support it that the workman had worked with Shri Nageshwar contractor w.e.f. 1st October, 1989 to 31st January, 1990. The version of the workman given on oath has to be believed that he had worked with the present management during the period from 1st October, 1989 to 31st January, 1990. It is thus, proved that the workman had worked for a period of more than 240 days under the present management continuously during the period from 1st April, 1989 to 31st January, 1990. His termination of service is illegal and unjustified as he was not paid retrenchment compensation envisaged under Section 25-F of the Act.

14. MW-2 M.P. Shrivastva stated on oath that the factory was closed on 7th February, 1994 as per notice Ex. M-6 placed on the file. There is no co-gent evidence from the side of the workman to rebut this position. That being so, the order for reinstatement of the workman can not be passed. The wrokman admitted in his cross examination that he had been working on the joint land belonging to him and his brother after the termination of his services. He is thus, not entitled to full back wages. In the circumstances of the case it is held that the workman shall be deemed to be in continuous service of the management upto 7th February, 1994 and he shall be given all benefits admissible to him on the closure of the factory upto this date. He will be given 75% of the back wages. The award is passed accordingly.

Dated the 11th November, 1994.

U.B. KHANDUJA,

Presiding Officer,
Labour Court-II, Faridabad.

Endorsement No. 3320, dated the 16th November, 1994.

A copy with three spare copies is forwarded, to the Financial Commissioner and Secretary to Government Haryana, Labour Department Chandigarh.

U.B. KHANDUJA,

Presiding Officer,
Labour Court-II, Faridabad.

The 2nd December, 1994

No. 14/13/87-6 Lab./977.—In pursuence of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Faridabad

in respect of the dispute between the workman and the management of M/S Thomson Press (India) Ltd., Paridabad versus Kanhiya Singh.

IN THE COURT OF SH. N.L. PRUTHI, PRESIDING OFFICER,
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, FARIDABAD

Reference No. 38 of 87

IN THE MATTER OF INDUSTRIAL DISPUTE

between

SH. KANHIYA SINGH,
H. NO. 2-E/19, NIT, FARIDABAD ..*Workman*

and

M/S THOMSON PRESS (INDIA) LTD.,
MATHURA ROAD, FARIDABAD .. *Management*

Present :

Sh. Kanwal Jeet Singh, authorised representative for Workman.

Sh. K.P. Aggarwal, authorised representative for Management.

AWARD

Under the provisions of Section 10(1) of Industrial Disputes Act, 1947, the Govt. of Haryana have,--*vide* Endst. No. SOV/FD/48-86/14983-88 dated 13th April, 1987 referred the following dispute between the parties above mentioned for adjudication :--

Whether the termination of services of Sh. Kanhiya Singh is legal and Justified. If not, to what relief he is entitled ?

2. The case of the workman is that he was appointed on 18th March, 1968 and was kept in employment till 2nd December, 1985. His designation was as that of a Senior Electrician. His work and conduct had always been satisfactory but the management did not want to keep him in service. With that end in view the management had issued a vague charge sheet and got conducted a domestic enquiry in unfair and improper manner as is evident from the following :--

(i) The representative of the management was conversent with process of enquiries whereas the workman was not permitted to bring his representative conversent with law;

(ii) No fair defence was permitted. The defence witness were threatened with ouster from service;

(iii) List of witness of the management when asked for before hand was not supplied to the workman;

(iv) Objections raised and submissions made by the workman were not entertained by the Enquiry Officer;

(v) The enquiry was not conducted in the language fully known to the workman despite repeated requests;

(vi) The retainer of the company and a law professional was appointed Enquiry Officer, who had shown every favour to the Management;

(vii) Enquiry report was not supplied to the workman;

(viii) No notice pay or compensation was paid to the workman at the time of termination of his services;

It is on the above said facts that the workman has requested that order dated 2nd December, 1985 of his dismissal be set aside and he be reinstated with full back wages.

3. The case of the management is that the workman committed serious acts of misconduct viz, in-subornation, hulting of abuses and attempting to assault his Departmental Head inside the factory. So, a charge sheet-cum-suspension letter was issued to him on 3rd July, 1985. A domestic enquiry was conducted into the matter and since the charges stood proved against the workman, he was dismissed from service on 2nd December, 1985. According to management, the enquiry was conducted according to the principles of natural justice. The workman was allowed to bring a co worker of the factory as his representative in the enquiry proceedings as per provisions of the certified standing orders of the company but he did not avail of this facility. The entire enquiry was conducted in the presence of the workman himself and each page was read over to him by the Enquiry Officer before the workman appended his signatures thereon. On the basis of the matter brought before him, the Enquiry Officer had given a report holding the workman guilty of the charges levelled against him. On making perusal of Enquiry report, wherein charges of misconduct were proved as also on account of workman's past disciplinary record, it was deemed detrimental to the interests of the origanisation to retain the workman in service any more and, as such, he was dismissed on 2nd December, 1985. According to Management, the workman is gainfully employed. An objection has also been taken that the reference is bad in law because the State Govt. did not give opportunity of hearing to the management before referring the dispute again after its first rejection.

4. The workman has, in the rejoinder, reiterated his own case and refuted the stand of the management.

5. On the pleadings of the parties following issues were framed :--

1. Whether the reference is bad in law as alleged ? OPM

2. Whether the enquiry is fair and proper ? OPM

3. Whether the dismissal of the workman is justified and in order. If not, to what relief he is entitled ? OPP

6. I have heard AR for the parties and perused facts on record. My findings on each of the issues with reasons therefor are as under :--

Issue No. 1 :

7. It is the admitted case of the parties that demand notice given by the workman earlier was rejected by the State Government,--*vide* letter Ex. M-7 of 4th June, 1986. It is mentioned therin that the stand taken by the workman had no basis, his services had been terminated in a rightful manner. This apart, it was not in the interest of industrial peace to retain the workman in service". The management's allegation

that it had not been heard before the present reference was made after the rejection of the case of the workman finds support from the statement made by the workman during the course of his examination as WW-1. Therein, the workman stated that before the issuance of rejection letter Ex. M-7, both the parties heard and that thereafter no hearing was given to him or the management by the State Government. This statement of the workman establishes it beyond doubt that the management had neither any notice nor it was given hearing when the present reference was made after rejection of the demand notice in the first instance. To support his contention that the reference was thus bad in law, the AR for the management placed reliance upon Tribune Trust versus State of Punjab and others, 1992 SLR(80) Punjab and Haryana 264. It was held therein that reference of a matter u/s 10(1) of Industrial Disputes Act, 1947 to the Industrial Tribunal after the same had been rejected earlier without issuance of notice to the affected persons was violative of the requirements of natural justice. This very authority also refers to the latest view of the Hon'ble Apex Court namely that, "Even administrative action which tends to interefere with any body's Civil right must also be proceeded by some kind of notice which would satisfy the requirements of natural justice." No authority contrary to the same was cited by AR of the workman. Therefore, in view of factual and legal position explained above, it is held that non issuance of notice by the State Government to the management before making a reference after its rejection renders the reference bad in law. This issue is thus decided in favour of the management and against the workman.

Issue No. 2

8. The AR for the management had at the very outset referred to the following five principles of natural justice, relating to the conduct of domestic enquiries, as published in Factories General Report Vol. 25 P. 25 (SC) :--

(i) Information of charge to the petitioner;

(ii) Statement of witnesses in his presence;

(iii) Opportunity to cross-examine management witnesses;

(iv) Opportunity to produce defence;

(v) Findings with reasons.

According to AR for the management, all the above said five principles were adhered to in this case as the workman in his examination as WW-1 admitted receipt of charge-sheet Ex. M-2 and enquiry notice Ex. M-3. The workman also admitted participation, through out, in the domestic enquiry and had signed each page of enquiry proceedings Ex. M-3. He had cross examined all the witnesses produced by the management and got his own statement record. He had also received copy of each day's proceedings and statement of each witness examined although with reservations sometimes that he was receiving the same with objections. The workman also stated in his examination that he was not in a position to produce any witness in his defence as his witnesses felt afraid of losing service.

9. Enquiry Officer K.P. Aggarwal examined as MW-1 stated that in addition to providing opportunity to the workman to cross-examine the witnesses of the management and also to produce his defence, he

had allowed him the opportunity to bring co-worker of the factory to assist him but the workman did not avail of the same. The Enquiry Officer admitted that he had not permitted the workman to bring R.P. Singh or Sukhdev Raj for his assistance because of a specific provision in the Standing Orders of the company according to which the workman could bring with him in the enquiry proceedings only a co-worker from the factory. So, according to AR for the management when the standing orders of the company did not provide for a representative from outsider or union official, the refusal on the part of the Enquiry Officer/management to allow outside union official to represent the workman should not be considered as a ground for holding that enquiry is violative of the principles of natural justice. Reliance on this behalf had been placed on **Crascent Dyes & Chemicals Ltd.** *versus* **Ram Naresh Tripathi** 1993 LLR (SC) 97.

The Enquiry Officer also stated that V.K. Kwatra the Presiding Officer of the management was, as per his information, a simple Graduate. That being the case, averment made on behalf of the workman that by not allowing him to bring a Law Graduate for his assistance he had been placed at a disadvantage has no basis at all. Moreso, even the management was not being represented by a law graduate. For that matter Hon'ble Supreme Court's authority viz; Board of Trustees of the Port of Bombay *versus* Dilip Kumar Raghavendara Nath Nadkarni and others 1983 Labour Law Journal (1) does not help the case of the workman.

10. There is no truth in the allegation made by the workman that he had been supplied with list of the witnesses. In his examination as W-1 the statement made by the workman that he had not supplied list of his witnesses to the Enquiry Officer while the management had supplied the list to the Enquiry Officer Ex. M-10 shows it that the workman himself complanant. The stand which the workman took for not supplying the list of the witnesses was that the persons whom he wanted to produce in support of his case were afraid of losing service if produced in enquiry. So, the blame in respect of the point raised by the workman lies on him alone. The workman had made a non committal stand by stating in his examination as W-1 that the management did supply him copies of documents although the same were not complete. Therefore, authorities cited by AR for the workman viz;, **Kanshi Nath** *versus* **Union of India and Others** AIR 1986 (SC) 2118 and Ashwani Kumar 1990 Lab.I.C. 364 do not help the case of the workman at all.

11. An averment had been made on behalf of the workman that K.P. Aggarwal who conducted the domestic enquiry admitted in his examination as MW-1 that he had been the consultant of the company since the year 1974. So, that being the case, the Enquiry Officer was totally biased and had only toed the line shown to him by the management and in such a situation it was a foregone conclusion that he would give his report in favour of the management. I do not agree with it. The report of domestic enquiry Ex. M-5 has been read threadbare. Every conclusion arrived at by the Enquiry Officer has been supported by a cogent reason and evidence on that point brought before him. So, simply on this ground that the enquiry report is trash and should be discarded has no validity or justification.

12. The Enquiry Officer admitted having not supplied copy of the enquiry report to the workman although copy of each day's proceedings and copy of each statement of witnesses of the parties was supplied

to the workman. The enquiry report is of 10th November, 1985. Therefore, authority relied upon by AR for the workman viz; **Union of India and others** *versus* **Mohd. Ramzan Khan 1991** (i) LLJ (SC) 29 cannot help his case because the cut out date after which copy of the enquiry report has necessarily to be supplied to the delinquent is 20th November, 1990 with no restrospective effect. As against this, the authority relied upon by AR for the management namely **Ram Vinod Jha** *versus* **Labour Court, Faridabad** 1990 LLN(i) 601 is very much applicable it was held therein that when the enquiry proceeding wre held in the presence of the workman he knows the nature of evidence produced in the enquiry and as such the non supply of copy of enquiry report did not vitiate the enquiry. The position would have been different if the workman had asked for copy of the report and his request was declined. In this case the workman had not asked for copy of report of the Enquiry Officer as stated by the latter in his examination as MW-1.

13. The AR for the workman also canvessed it that the hammer alleged to have been picked up by the workman to assault his superior was not produced before the Enquiry Officer nor the same was shown to the witnesses produce before the Enquire Officer. One should not lose sight of this that such like proof is required when the matter is being investigated under the code of criminal procedure. The instant case is of domestic enquiry wherein strict proof as laid down in the Indian Evidence Act is not at all necessary. So, the exhibition of hammer by the Enquiry Officer was not all required. It was held in **K.L. Shinde** *versus* **State of Maysore**, 1976 Supreme Court cases (L & S) 386.

14. The worker's contention that the Enquiry Officer had not conducted the proceedings in the language the worker knew viz, 'Urdu' has no force because in Haryana 'Urdu' is not the language of the State and here the entire work is done in Hindi and the proceedings were also conducted in Hindi.

15. An objection had, of course, been taken by the workman that his request for the change of the Enquiry Officer was ignored. The proceedings show that the workman had continued taking part in the proceedings till the completion of the enquiry proceedings meaning thereby that the workman did not press his objection and had rather acquiesed in the matter.

16. So, view from any angle, it has to be held that the enquiry was conducted in fair and proper manner and no principle of natural justice was violated by the management. This issue is thus decided in favour of the management and against the workman.

Issue No. 3

17. The Enquiry Officer had held the workman guilty of having used filthy and dirty words for his Divisional Manager L.P. Kaushik. It has also been proved that the workman picked up a hammer to strike him during duty hours. So, for this proven misconduct, the man agement was well within its legal rights to do away with the services of Keniya Singh, and this court cannot sit in judgement over the decision of the management. More so, the workman had attained the age of superannuation on 31st December, 1992 i.e. during the pendency of this case. Therefore, for this reason his reinstatement is out of question. However, keeping in view the fact that the workman had served the management for more than 17 years. I feel that it would serve the ends of justice if the workman is paid a lumpsum amount of Rs. 50,000 (Fifty Thousands Only)

by way of compensation, in eddition to his gratuity and other allowances viz, suspension allowance, HRA, Leave encashment bicycle and welfare allowance as were payable to him on 2nd February, 1985.

N.L. PRUTHI,

The 8th November, 1994

Presiding Officer,
Industrial Tribunal-cum-
Labour Court-I, Faridabad.

Endst. No. 3847, dated 8th November, 1994.

A copy, with three spare copies, is forwarded to the Commissioner and Secretary to Government, Haryana, Labour Department, Chandigarh.

N.L. PRUTHI,

Presiding Officer,
Industrial Tribunal-cum-
Labour Court-I, Faridabad.

The 7th December, 1994

No. 14/13/87-6 Lab./992.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar in respect of the dispute between the workman and the management of M/s Chairman and Secretary, Board of School Education, Haryana, Bhiwani vs Balkishan Sharma :--

BEFORE SHRI B.R. VOHRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HISAR

Reference No. 607 of 90

SHRI BAL KISHAN SHARMA S/O SURAT RAM SHARMA BAIJNATH KI GALI, LOHAR BAZAR, BHIWANI

versus

1. CHAIRMAN, BOARD OF SCHOOL EDUCATION, HARYANA, BHIWANI
2. SECRETARY, BOARD OF SCHOOL EDUCATION, HARYANA, BHIWANI

Present :

Shri Chetan Anand, for the workman.

Shri O.P. Jain, for the management.

AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (for short, 'the Act'), the Governor of Haryana referred the following dispute between Bal Kishan and the above mentioned management for adjudication to this

Court ,--*vide* Labour Department letter No. Bwn/163--88/20122--128, dated the 9th May, 1988 :--

Whether termination of services of Bal Kishan Sharma is justified and in order ? If not, to what relief is he entitled ?

2. According to thee petitioner, he was appointed as Clerk on 7th May, 1984 and according to him, his services were terminated in June, 1985 orally by saying that he was not more required. The workman has pleaded that he has worked for more than 240 days during the said period and termination of his services was therefore illegal, being in violation of the provisions of Section 25-F of the Act and that principle of "last come, first go" had not been complied with, thus amounting to unfair labour practice on the part of the management. The workman, therefore, prayed for reinstatement with full fack wages and other consequential benefits.

3. The management, in its written statement, stated that the applicant was appointed on daily wages for specific period and that his services stood automatically terminated on 19th February, 1985 in view of the terms of appointment order. It was stated that the applicant had worked as clerk on daily wages from 7th May, 1984 to 6th August, 1984, then from 13th August, 1984 to 12th November, 1984 and again from 23rd November, 1984 to 19th February, 1985. It was also stated that at the time of examination, there was shortage of staff and some staff on daily wages were appointed and their wages were paid from the head "conduct of examination".

4. On the pleadings of the parties, the following issues were framed on 16th November, 1988 by the then Presiding Officer, Labour Court, Rohtak :--

(1) As per terms of reference.

(2) Relief.

5. *vide* award dated 11th April, 1991, workman was ordered to be reinstated with back wages from 1st January, 1988. The management felt agrieved and challenged the said award in the Hon'ble High Court by filing writ petition and ,--*vide* order dated 8th October, 1993, the writ petition was accepted and the award dated 11th April, 1991 was quashed and the case was remitted back to this Court for fresh decision in accordance with law, after permitting the parties to lead avidence in support of their respective contentions.

6. After the order of Hon'ble High Court was received in this Court, the parties was summoned and the following additional issue was framed ,--*vide* order dated 4th March, 1994 :—

1-A : Whether the appointment of the workman was for a fixed period of three months each and it come to an end automatically on the expiry of the said period ? If so, to what effect ?

7. The parties were afforded opportunities to lead evidence in support of their respective contentions as ordered by Hon'ble High Court.

8. It have heard Shri Chetan Anand, A.R. of the workman and Shri O.P. Jain, A.R. of the management and have gone through the case file. My findings on the above issues are as under :--

Issue No. 1 & 1-A

9. Both these issues aree inter-connected, and as such, are taken up together for purposes of facility.

10. Jagdish Kumar Saini, Clerk of Education Board appeared as MW-1 on 6th December, 1989 and he admitted that the workman Bal Kishan had worked as Clerk on daily wages for the following periods :--

(1) 7th July, 1984 to 6th August, 1984 (92 days)

(2) 13th August, 1984 to 12th November, 1984 (92 days)

(3) 23rd November, 1984 to 19th February, 1985 (89 days)

He further clarified that services of the applicant were not terminated that his appointment came to an end automatically on the expiry of the period for which he was appointed. He also explained that the applicant was appointed to cope with the extra work owing to conduct of examination and he adduced in evidence documents Ex. M-1 to Ex. M-7.

11. After remand of the case, one Kashmiri Lal, Clerk was examined as MW-1 and he also made a similar statement that the workman was appointed for the aforementioned period on daily wages.

12. It is admitted by Kashmiri Lal, MW-1 in his cross-examination that the job, which the workman was now doing, was of permanent nature and he could not deny the suggestion that the job, which the applicant did at the relevant period of 1984-85 was also of permanent nature. He also admitted that now clerks were appointed in 1989 as well as in 1991 and that some posts were still lying vacant. Even Jagdish Kumar Saini, in his statement made on 6th December, 1989, had admitted in his cross-examination that the workman was appointed in Middle Section against a vacant post and he also admitted that after 19th February, 1985, the management had recruited about 100 Clerks. He also admitted positively that the job, which the workman had been doing, was of permanent nature.

13. As alredy stated above, it is admitted by Jagdish Kumar, MW-1 that the workman had worked for 273 days in three intervals with few days gap in between. It was argued hotly by Shri O.P. Jain, A.R. of the management that the discharge of the workman on expiry of limited period for which he was employed, would not entail following of procedure, as contained in Section 25-F of the Act and the amendment brought out in the defination of "retrenchment" by virtue of clause (bb) was pressed into service for the aforesid contention. This argument in the background of the above circumstances, can not be accepted. In the authority of **Haryana State Federation of Consumer's Co-op Wholesale Stores Ltd.** *versus* **Presiding Officer Labour Court, Chandigarh,** 1992 (1) SCT-697, it was held that the provisions of Section 2(oo) (bb) of the Act are to be read alongwith Section 25-F of the Act and when the management allows the workman to continue in service with notional breaks after the workman had put in 240 days in service, in 12 months, it amounts to unfair labour practice, if his services are terminated, Similar observations were made by Punjab and Haryana High Court in the authority reported as **The**

Kurukshetra Central Co-op. Bank Ltd; Kurukshetra *versus* **State of Haryana and Others** 1993 (1) REJ-763.

14. In the instant case, the workman is proved to have worked for 273 days during 12 calendar months with notional breaks and as already stated above, it has been admitted by Jagdish Kumar, MW-1 that the job rendered by Bal Kishan was of permanent nature and that after 19th February, 1985, the Board had recruited above 100 Clerks more. It, therefore, cannot be said that the work that was being taken from the workman ceased to exists and the employer cannot be permitted to act in such a way that may cause complete injustice to the workman and also to conveniently devitate from the provisions of law of retrenchment which necessarily requires one month's notice or compensation in lieu thereof at the time of retrenchment. It is not disputed that the aforesaid procedure was not followed in this case.

15. It was also held by Hon'ble High Court in the authority **Kurukshetra Central Co-op. Bank Ltd;** *Versus* **State of Haryana (SUPRA)** that if after the expiry of period mentioned in the contract a few days break is given and the workman is re-employed once again for limited period and such course is repeated number of times and ultimately when a workman is shown the exist door, the work is still available, then the same has to be held to have not been done in good faith but in colourable exercise of the right as also the same would be on patently false reasons and such a case would come within clause (5) of fifth Schedule of the Act.

16. In the wake of the above discussion, I hold that the termination of services of the workman was unjustified and improper and the present case is not covered under the exception clause 2(oo) (bb) of the Act. The workman is therefore, entitled to reinstatement.

17. As regards the back wages, the workman slept over the matter for a long period. His services were terminated in Februray, 1985. He served the demand notice some time in December 1987. There is no date on the demand notice received alongwith the reference. But keeping in view the normal time, which is taken by the Labour Department generally for making a reference, I presume that the demand notice might have been served in December, 1987. I, therefore, find that the petitioner, who did not move the Labour Department for more than 2 years after the termination of his services, is not entitled to back wages from the date of termination upto 31st December, 1987. Therefore, I allow back wages to the workman with effect from 1st January, 1988 onwards.

18. As a result of above discussion, Both these issues are answered in favour of the workman.

Issue No. 2-Relief

19. In view of my findings on the above issues, the termination of services of the petitioner is held illegal. The same is hereby set-aside. The petitioner is reinstated in the same post forthwith, with benefit of continuity of service and other consequential benefits. The workman shall not be entitled to any wages from the date of termination to 31st December, 1987. He shall be entitled to full back wages from

1st January, 1988 onwards. The reference is answered accordingly, with no order as to costs.

Dated the 14th November, 1994.

B.R. VOHRA,
Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Hisar.

Endorsement No. 2403, Dated the 17th November, 1994

A copy, with spare copy, is forwarded to the Financial Commissioner and Secretary to Government Haryana, Labour and Employment Department Chandigarh for necessary action.

B.R. VOHRA,
Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Hisar.

No. 14/13/87-6 Lab./994.--In pursuence of the provisions of sectiion 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar in respect of the dispute between the workman and the management of M/s Lyka Labs, Vile-Parle, East Bombay.

BEFORE SHRI B.R. VOHRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HISAR.

Reference No. 44 of 1990

Date of receipt : 14-9-1989

Date of decision : 9-11-1994

SHRI K.B. VERMA, H.NO. 16-B, MODEL TOWN, Hisar-125005. .. *Applicant*

Versus

M/s LYKA LABS, 77, NEHRU ROAD, VILE-PARLE, EAST BOMBAY-400099. .. *Respondent Mgt.*

Present :

Shri N.K. Jain, for the workman.

Shri J.C. Anand for the management.

AWARD

In exercise of the powers conferred by clause (c) of Sub Section (1) of Section 10 of the Industrial Disputes Act, 1947 (for short,' the I.D. Act'), the Governor of Haryana referred the following dispute between K.B. Verma and the above mentioned management for

adjudication to this Court vide Labour Deptt. letter No. Hsr/224-89/ 39124-29, dated 11the September 1989 :--

Whether termination of services of K.B. Verma is justified and in order ? If not, to what relief is he entitled ?

2. According to the applicant, he was appointed as Medical Representative by the management with effect from 22nd December, 1981 and that after completion of probation period, he become regular employee of the management. It is alleged that the services of the applicant were terminated.--*vide* letter dated 24th April, 1989 and prior thereto a charge sheet was served upon him and domestic enquiry was conducted. According to the applicant, the domestic enquiry was illegal and was vitiated for the various reasons given in sub paras (i) to (vi) of the claim statement. He therefore, prayed for reinstatement with back wages and other consequential benefits.

3. The management, in its written statement took a preliminary objection that medical representative was not a "workman" as defined in the I.D. Act and as such, this Court has no jurisdiction to try this case. The allegations made by the applicant on merits, were also denied and it was stated that domestic enquiry conducted against the applicant was just and proper and did not violate the provisions of natural justice.

4. On the pleadings of the parties, the following issues were framed by my learned predecessor.--*vide* order dated 6th May, 1991 and 25th May, 1992:--

1. As per terms of reference.
2. Whether the management conducted a just and proper domestic enquiry against the workman ? If so, to what effect ?
3. Whether this Court has no jurisdiction to decide the matter ?
4. In case the enquiry is not provide to be just, whether the workman is guilty of grave misconduct, as alleged ?

4(a) Whether the petitioner is not a workman and this Court has no jurisdiction as alleged in the preliminary objection ?

5. Relief.

5. Issue No. 2 regarding domestic enquiry was treated as preliminary issue. Subsequently, issue No. 4(a) was also treated as preliminary issue.--*vide* order dated 25th August, 1994 and with the consent of the A.R.s of the parties, arguments were heard on preliminary issue No. 4(a) only. My findings on preliminary issue No. 4(a) are as under :--

Issue No. 4(a)

6. Shri J.C. Anand, A.R. of the management argued hotly that medical representative, as the applicant was, was not a "workman", according to the definition of "workman" under Section 2(s) of the I.D. Act, 1947 and in support of his argument, he laid reliance on the latest authority of Hon'ble Supreme Court of India reported as H.R. Adyanthaya etc. etc. *Vs.* Sandoz (India) Limited etc. etc., 1994(5) SLR-255.

7. Shri N.K. Jain, A.R. of the applicant also relied upon the above authority of Hon'ble Supreme Court of India to butress his view that the medical representative is a "workman" under Section 2(s) of the I.D. Act and in this connection, he relied upon the following observations made by the Supreme Court of India at the fag end of para 4 of the judgment:--

> "In other words, on and from 6th March, 1976, the provision of the I.D. Act became applicable to the medical representatives depending upon their wages upto 6th May, 1987 and without the limitation on their wages thereafter and upon the capacity in which they were employed or engaged."

8. I have carefully gone through the judgment of Hon'ble Supreme Court of India reported as H.R. Adyanthaya etc. etc. *Vs.* Sandoz (India) Limited etc. etc. (SUPRA). The question that fell for consideration before Hon'ble Supreme Court was whether the 'Medical Representatives' as thay are commonly known, are "workmen", according to the definition of "workman" under Section 2(s) of the I.D. Act and after discussing the various amendments brought by the legislature thereby amending the term "workman" as contained in Section 2(s) of the I.D. Act, the amendments brought in Section 2(j) of the I.D. Act relating to the definition of "industry", the Hon'ble Supreme Court accepted the arguments of the management in the appeal that the medical representatives were not "workmen" within the meaning of the Maharastra Recognition of Trade Unions and Prevention of Unfair Labour Practice Act, 1971. It is to be noted that on account of Section 3(18) of the aforesaid Act of 1971, the definition of "workman" under that Act would be the same as under the I.D. Act and it was held that the definition of "workman" under the I.D. Act will not cover the 'Sales Promotion Employees' within the meaning of the Sales Promotion Employees (Conditions of Services) Act, 1976 (The SPE Act).

9. The contention raised by Shri N.K. Jain, A.R. of the applicant that since the provisions of I.D. Act had been made applicable to the medical representatives on and from 6th March, 1976, when SPE Act came into force and on that account the medical representatives are "workmen" within the meaning of its definition, is misconceived and has been rejected, because the Hon'ble Supreme Court observed in the above mentioned authority that SPE Act was brought on statute book as a result of judgment of Supreme Court in the case of May and Baker (India) Ltd. *Vs.* their workmen, 1961 (2) LLJ-94. Under Section 6 of the SPE Act, the provisions of I.D. Act etc. were made applicable to the medical representatives. That by itself does not mean that the medical representatives, as such, became "workmen" within the definition given in Section 2(s) of the I.D. Act and it is to be noted that the amendment made in the definition of "industry" in Section 2(j) of the Act by the amending Act No. 46 of 1982, has not yet come into force. The argument that the medical representatives are engaged in "skilled" work and that on that account they became "workmen", had been rejected by the Supreme Court in the above noted authority and as regards the plea of "technical" nature of their work, the same has already been rejected by Hon'ble Supreme Court in the authority of Burmah Shell Oil Storage and Distribution Co. of India *Vs.* Burmah Shell Management Staff Association and Others. AIR 1971-SC-922.

10. The agrument that was advanced by Shri N.K. Jain, A.R. of the applicant that since the I.D. Act was amended to make all "Sales Promotion Employees" irrespective of their wages, "Workmen" with effect from 6th May, 1987, it should be held that the definition of "workman" under the I.D. Act covered the sales promotion employees, was also made before the Hon'ble Supreme Court in the above noted authority, as is borne out from para 8 of the judgment, but the came was rejected and the following observations of Hon'ble Supreme Court are of importance:--

> "We are afraid that these contentions are not well placed. We have already pointed out as to why the word "skilled" would not include the kind of work done by the sales promotion employees. For the very same reason, the word "operational" would also not include the said work. To hold that everyone who is connected with any operation of manufacturing or sales is a workman would render the categorisation of the different types of work mentioned in the main part of the definition meaningless and redundant. The interpretation suggested would in fact mean that all employees of the establishment other than those expressly excepted in the definition are workmen within the meaning of the said definition....."

11. Relying upon the above recent authority of the Apex Court, I, therefore, hold that the applicant, who was admittedly employed as medical representative, is not a "workman" as defined under Section 2(s) of the I.D. Act and on that account, this Court has no jurisdiction to decide the reference. This preliminary issue is, therefore, answered in favour of the management.

12. Since the applicant has not been held "workman" as defined in Section 2(s) of the I.D. Act, this Court has no jurisdiction to decide the reference made by the State Govt. under Section 10 (1) (c) of the I.D. Act, 1947. The reference is answered accordingly, with no order as to costs.

Dated the 9th November, 1994.

B.R. VOHRA,
Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Hisar.

Endorsement No. 2380, Dated the 10th November, 1994.

A copy, with spare copy, is forwarded to the Financial Commissioner and Secretary to Government Haryana, Labour and Employment Departments Chandigarh for necessary action.

B.R. VOHRA,
Presiding Officer,
Industrial Tribunal-cum-Labour Court,
Hisar.